IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION No. 4482 of 2005.

Kundalik N. Sale. ..Petitioner.

Vs.

The Secretary,
Maratha Mandir Vidyavardhini
& Ors. ..Respondents.

Mr.Suresh Pakle for Petitioners.

Mr. A.H. Palekar, A.G.P.for Respondent no.3.

None for Respondent Nos. 1 and 2 though served.

CORAM: R.M.S.KHANDEPARKAR,J.

DATED: 9TH NOVEMBER,2006.

P.C.:-

1] Heard.

2] The petitioner challenges order dated 21st April, 2005 passed by the School Tribunal in Appeal No. 103 of 1997. By the impugned order, the School Tribunal has dismissed the appeal filed by the Petitioner against the order of the termination of his services. The contention of the petitioner is that the findings arrived at by the School Tribunal

that the petitioner was wrongly appointed in the post meant for O.B.C.candidate and that the petitioner does not belong to O.B.C.category and,therefore, the appointment of the petitioner was not in a clear vacancy,

are contrary to the materials on record.

3] Inspite of repeated query by the Court to point out the material which would disclose the said finding to be contrary to the materials on record and that therefore perverse, the learned Advocate for the petitioner, apart from drawing attention to two statements in the W.S., filed by the management before the School Tribunal, could not point out any other material. The attention was drawn to the statements in para three and para eleven of the petition wherein it has been stated that the appointment of the appellant was as per roster point and backlog of S.C.,category and that he belongs to the same category. The respondent had issued said appointment order in view of Rule 9(9)(b) and further that "respondent further submit that no approval was given to the appointment of the appellant even though he belongs to

reserved category, there was a back log of the same and, therefore, action taken by the management as per the procedure laid down in the ground in the Court is proper and legal". None of the statement discloses that as per roster since 13.12.1990 till 31st December, 1992 the backlog in relation to one S.C. reserved category and one O.B.C. reserved category were cleared.However, in relation to S.C. category backlog same was sought to be cleared by appointment of one Shri. B.R.Mohite in the year 1993 and the backlog in in respect of O.B.C. category was carried forward in the year 1994. However, instead of appointing O.B.C., category candidate, the management proceeded to appoint the petitioner in the year 1994. Obviously, it was without clearing the backlog in respect of the O.B.C.,category. Neither any approval in respect thereof was taken nor the management had disclosed to the School Tribunal that there was any backlog left in relation to the O.B.C.,category in the year 1994. In the background of this factual position, no fault can be found with the said finding arrived at by the School Tribunal and the finding that

the appointment of the petitioner was not in clear vacancy is clearly borne out from the records.

4] Reliance was sought to be placed in the decision of the Division Bench in the matter of **Lalitha Thutpi Vs.C.B.Karkhanis,Presiding Officer,School Tribunal Bombay and Others reported in MEC 1532.** Attention was drawn to para 10 of the said judgment wherein it has been observed that

> " At this juncture, we would like to advert to the circular of the year 1979. This Circular favours the petitioner in all respect and practically it is death blow to the case putforth by respondent no.2. It is clearly mentioned in the circular of 1979 that if a particular vacancy was required to be earmarked as "Reserved" according to the Roster but it has not been filled in by appointment of a person

belonging to a particular section of Backward Classes for which the vacancy was earmarked but by appointing a person belonging to some other section, the services of the person concerned need not be terminated, provided he/she fulfils the condition stated in the circular of 1979. The Circular however makes it clear that in such type of cases as the rule of carry forward is to be applied and the vacancy should be carried forward for the next occasion of recruitment."

[Emphasis supplied]

5] It was nobody's case that the vacancy which was meant for one category in terms of the Roster, was filled in by appointing the person belonging to different backward classes and that therefore in pursuance of any such Circular, vacancy meant for O.B.C., was

carried forward in the year 1995 or thereafter. Merely referring to the above referred Judgment or to the Circular of 1979 that would not enure to the benefit of the petitioner that once the petitioner was appointed in the year 1994 even though the vacancy was meant for O.B.C. category candidate. In order to take help of such circular it was necessary to raise the specific plea in that regard to disclose the vacancy meant for O.B.C., was carried forward thereafter. In the absence of the same, neither the petitioner is entitled to take shelter of Circular of year 1979 nor the decision of the Division Bench in **Lalitha's** case is of any help to the petitioner.

6] For the reasons stated above, I do not find any jurisdictional error committed by the Tribunal while passing the impugned order nor it warrants any interference in exercise of the powers under Article 227 of the Constitution. Hence petition fails and is hereby rejected.

7] At this stage, the learned Advocate for

the petitioner submits that since for last 12 years, the petitioner had been in employment and therefore, his services may be protected for the period of four weeks. It is directed that the services of the petitioner shall not be terminated for a period of six weeks.

Sd/-

[R.M.S.KHANDEPARKAR,J]